

BRB No. 01-0656

DEBORAH L. COLLINS)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
RIO DOCE PASHA TERMINAL)	DATE ISSUED: <u>May 6, 2002</u>
)	
and)	
)	
STATE COMPENSATION)	
INSURANCE FUND)	
)	
Employer/Carrier-)	
Respondents)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Alexander Karst,
Administrative Law Judge, United States Department of Labor.

Preston Easley (Law Offices of Preston Easley), San Pedro, California, for claimant.

Gary M. Spero, State Compensation Insurance Fund, Santa Ana, California, for
employer/carrier.

Before: DOLDER, Chief Administrative Appeals Judge, McGRANERY and
GABAUER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2000-LHC-0993) of
Administrative Law Judge Alexander Karst rendered on a claim filed pursuant to the provisions of
the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the
Act). We must affirm the administrative law judge's findings of fact and conclusions of law which
are rational, supported by substantial evidence, and in accordance with law. *O'Keeffe v. Smith,
Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant sustained a work-related, soft tissue injury on January 2, 1998, when a bundle of
steel pipes struck her right foot. Employer voluntarily paid claimant temporary total disability
benefits. Thereafter, claimant sought permanent partial disability benefits under the schedule. *See*
33 U.S.C. §908(c)(4), (19). The administrative law judge found that claimant does not have any

residual impairment from her injury, and he therefore denied claimant benefits.

On appeal, claimant contends the administrative law judge erred in finding that she has no impairment from the work injury. Employer responds, urging affirmance.

Claimant first contends that the administrative law judge erred in rejecting the opinion of her treating physician, Dr. Kurzweil, that she suffers a 7 percent whole-man impairment, which claimant contended translates to a 17 percent impairment to the lower extremity. The administrative law judge rejected Dr. Kurzweil's opinion, as he found that the doctor did not properly apply the American Medical Association *Guides to the Evaluation of Permanent Impairment* (AMA Guides). This finding is supported by substantial evidence. Dr. Kurzweil specifically stated that Table 36 of the AMA Guides, on which he relied, provides for a 7 percent whole-man impairment rating where there is "an antalgic limp with shortened stance phase and documented moderate to advanced arthritic changes of hip, knee or ankle." CX 3. The administrative law judge found that Dr. Kurzweil adopted the 7 percent rating even though he admitted that claimant does not have arthritic changes.¹ Inasmuch as the administrative law judge found that Dr. Kurzweil's impairment rating lacked a proper foundation, he rationally stated he was not required to give Dr. Kurzweil's opinion "special weight" even though he was a treating physician. See *Amos v. Director, OWCP*, 153 F.3d 1051 (9th Cir. 1998), *amended*, 164 F.3d 480, 32 BRBS 144(CRT) (9th Cir. 1999), *cert. denied*, 528 U.S. 809 (1999). Furthermore, the administrative law judge rationally credited the opinions of Drs. Smith and London that claimant suffers no rateable permanent impairment from her 1998 injury, because he found these opinions fully documented and explained. EX 1, 2. In this regard, the administrative law judge also noted that Dr. Smith could be considered a treating physician as he saw claimant three times on referral from Dr. Kurzweil.

Claimant also contends that the administrative law judge erred in not awarding her benefits based on her description of her symptoms, which include, *inter alia*, her foot giving way, swelling and pain in her foot, and balance problems on uneven decks on ships. See Tr. at 18-19. Any error the administrative law judge made in not specifically addressing this testimony is harmless, as the administrative law judge credited the opinions of Drs. Smith and London. These physicians both found claimant's subjective complaints to be greater

¹Dr. Kurzweil stated that claimant "does not have the arthritic changes in the hip, knee or ankle..." and wrote that "one must overlook the requirement to have arthritis." His purported rationale is that "it would be impossible for [her foot problem to cause arthritic] changes in her hip, knee or ankle unless they were pre-existing." CX 3.

than expected based on the lack on any objective findings. EX 1. Thus, as the administrative law judge's finding that claimant has no permanent impairment is rational and supported by substantial evidence, it is affirmed. *See Cotton v. Army & Air Force Exchange Services*, 34 BRBS 88 (2000); *Pimpinella v. Universal Maritime Service, Inc.*, 27 BRBS 154 (1993).

Accordingly, we affirm the administrative law judge's Decision and Order Denying Benefits.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

PETER A. GABAUER, Jr.
Administrative Appeals Judge